

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN MEJIA LOPEZ, CV F 05-0267 LJO WMW HC
Petitioner, FINDINGS AND RECOMMENDATIONS RE
v. PETITION FOR WRIT OF HABEAS CORPUS
THOMAS L. CAREY,
Respondent.

Petitioner is a prisoner proceeding with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

PROCEDURAL HISTORY

Pursuant to a jury trial in Fresno County Superior Court, Petitioner was found guilty of three counts of willful harm or injury to a child (Penal Code Section 273a(a)), one count of driving under the influence of alcohol with bodily injury to another (Vehicle Code Section 23153(b)), and the misdemeanor offenses of being an unlicensed driver (Vehicle Code Section 12500(a)), and driving without evidence of financial responsibility (Vehicle Code Section 16028(a). In a separate proceeding, Petitioner admitted four prior prison term enhancements (Penal Code Sections 667.5(b))

1 and allegations that he had a prior conviction within the meaning of the three strikes law (Penal Code
2 Sections 667(b)-(I)).

3 Petitioner filed a direct appeal to the California Court of Appeal, Fifth Appellate District
4 (“Court of Appeal”). In an unpublished opinion in case no. F037419, the Court of Appeals affirmed
5 Petitioner’s convictions and remanded the matter to the trial court for retrial on the prior prison term
6 enhancements and the prior conviction allegations. On February 11, 2003, the court made the
7 preliminary determination that Petitioner was the person named in documents that the prosecution
8 intended to use to prove that in 1994 Petitioner was convicted of first degree burglary in Ventura
9 County. The court also granted the prosecutor’s motion to strike three of the prior prison term
10 enhancements. Thereafter, a jury found true the remaining prior prison term enhancement and the
11 allegation that Lopez had a prior conviction within the meaning of the three strikes law. The trial
12 court sentenced Petitioner to an aggregate term of thirteen years in state prison.

13 Petitioner filed a direct appeal to the California Court of Appeal, Fifth Appellate District
14 (“Court of Appeal”). The Court of Appeal affirmed Petitioner’s conviction and sentence. Petitioner
15 filed a petition for review, which the California Supreme Court denied on June 9, 2004.

16 The present petition for writ of habeas corpus was filed on February 24, 2005.

17 **LEGAL STANDARD**

18 **JURISDICTION**

19 Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant
20 to the judgment of a state court if the custody is in violation of the Constitution or laws or treaties of
21 the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 120 S.Ct.
22 1495, 1504 fn.7 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by
23 the United States Constitution. In addition, the conviction challenged arises out of the Fresno
24 County Superior Court, which is located within the jurisdiction of this court. 28 U.S.C. § 2254(a);
25 2241(d). Accordingly, the court has jurisdiction over the action.

26 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of
27 1996 (“AEDPA”), which applies to all petitions for writ of habeas corpus filed after its enactment.
28 Lindh v. Murphy, 521 U.S. 320, 117 S.Ct. 2059, 2063 (1997), *cert. denied*, 522 U.S. 1008, 118 S.Ct.

1 586 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (quoting Drinkard v. Johnson, 97
2 F.3d 751, 769 (5th Cir. 1996), *cert. denied*, 520 U.S. 1107, 117 S.Ct. 1114 (1997), *overruled on other*
3 *grounds by* Lindh v. Murphy, 521 U.S. 320, 117 S.Ct. 2059 (1997) (holding AEDPA only applicable
4 to cases filed after statute's enactment). The instant petition was filed after the enactment of the
5 AEDPA, thus it is governed by its provisions.

6 STANDARD OF REVIEW

7 This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody
8 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the
9 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

10 The AEDPA altered the standard of review that a federal habeas court must apply with
11 respect to a state prisoner's claim that was adjudicated on the merits in state court. Williams v.
12 Taylor, 120 S.Ct. 1495, 1518-23 (2000). Under the AEDPA, an application for habeas corpus will
13 not be granted unless the adjudication of the claim "resulted in a decision that was contrary to, or
14 involved an unreasonable application of, clearly established Federal law, as determined by the
15 Supreme Court of the United States;" or "resulted in a decision that was based on an unreasonable
16 determination of the facts in light of the evidence presented in the State Court proceeding." 28
17 U.S.C. § 2254(d); Lockyer v. Andrade, 123 S.Ct. 1166, 1173 (2003) (disapproving of the Ninth
18 Circuit's approach in Van Tran v. Lindsey, 212 F.3d 1143 (9th Cir. 2000)); Williams v. Taylor, 120
19 S.Ct. 1495, 1523 (2000). "A federal habeas court may not issue the writ simply because that court
20 concludes in its independent judgment that the relevant state-court decision applied clearly
21 established federal law erroneously or incorrectly." Lockyer, at 1174 (citations omitted). "Rather,
22 that application must be objectively unreasonable." Id. (citations omitted).

23 While habeas corpus relief is an important instrument to assure that individuals are
24 constitutionally protected, Barefoot v. Estelle, 463 U.S. 880, 887, 103 S.Ct. 3383, 3391-3392 (1983);
25 Harris v. Nelson, 394 U.S. 286, 290, 89 S.Ct. 1082, 1086 (1969), direct review of a criminal
26 conviction is the primary method for a petitioner to challenge that conviction. Brecht v.
27 Abrahamsen, 507 U.S. 619, 633, 113 S.Ct. 1710, 1719 (1993). In addition, the state court's factual
28 determinations must be presumed correct, and the federal court must accept all factual findings made

1 by the state court unless the petitioner can rebut "the presumption of correctness by clear and
2 convincing evidence." 28 U.S.C. § 2254(e)(1); Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769
3 (1995); Thompson v. Keohane, 516 U.S. 99, 116 S.Ct. 457 (1995); Langford v. Day, 110 F.3d 1380,
4 1388 (9th Cir. 1997).

5 A petitioner who is in state custody and wishes to collaterally challenge his conviction by a
6 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The
7 exhaustion doctrine is based on comity to the state court and gives the state court the initial
8 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
9 U.S. 722, 731, 111 S.Ct. 2546, 2554-55 (1991); Rose v. Lundy, 455 U.S. 509, 518, 102 S.Ct. 1198,
10 1203 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

11 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
12 full and fair opportunity to consider each claim before presenting it to the federal court. Picard v.
13 Connor, 404 U.S. 270, 276, 92 S.Ct. 509, 512 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir.
14 1996). A federal court will find that the highest state court was given a full and fair opportunity to
15 hear a claim if the petitioner has presented the highest state court with the claim's factual and legal
16 basis. Duncan v. Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 888 (1995) (legal basis); Kenney v.
17 Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis). Additionally, the petitioner
18 must have specifically told the state court that he was raising a federal constitutional claim. Duncan,
19 513 U.S. at 365-66, 115 S.Ct. at 888; Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998).

20 When, as here, the California Supreme Court's opinion is summary in nature, however, this
21 court "looks through" that decision and presumes it adopted the reasoning of the California Court of
22 Appeal, the last state court to have issued a reasoned opinion. See Ylst v. Nunnemaker, 501 U.S.
23 797, 804-05 & n. 3, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991) (establishing, on habeas review, "look
24 through" presumption that higher court agrees with lower court's reasoning where former affirms
25 latter without discussion); see also LaJoie v. Thompson, 217 F.3d 663, 669 n. 7 (9th Cir.2000)
26 (holding federal courts look to last reasoned state court opinion in determining whether state court's
27 rejection of petitioner's claims was contrary to or an unreasonable application of federal law under §
28 2254(d)(1)).

DISCUSSION

Denial of Right to Jury Trial

Petitioner contends that the trial court denied him the right to due process and the right to a jury trial on the prior prison term enhancement and the prior conviction allegation by failing to allow the jury to determine whether he was the “Steven Lopez” named in the Ventura County documents that were used to prove those allegations. Petitioner raised this claim on direct appeal to the Court of Appeals, which denied the claim in a reasoned opinion. Petitioner then raised the claim in his petition for review with the California Supreme Court, which denied the petition without comment.

Respondent is correct in arguing that Petitioner was not constitutionally entitled to a jury verdict regarding his prior convictions. In Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), the Court held as follows:

Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. With that exception, we endorse the statement of the rule set forth in the concurring opinions in that case: “[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.” 526 U.S., at 252-253, 119 S.Ct. 1215 (opinion of STEVENS, J.); see also *id.*, at 253, 119 S.Ct. 1215 (opinion of SCALIA, J.).

This language expressly excludes from jury determination the very issue raised here: the fact of a prior conviction. The Court of Appeal reached this same conclusion, citing in part to the above language from Apprendi. Accordingly, the court finds that Petitioner has failed to carry his burden of showing that the adjudication of the claim by the state court “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d). Therefore, the court must conclude that this contention provides no basis for habeas corpus relief.

Sufficiency of the Evidence

Petitioner contends that the evidence presented at trial was insufficient to sustain the jury's finding that he was previously convicted of residential burglary. Petitioner raised this claim on direct appeal to the Court of Appeals, which denied the claim in a reasoned opinion. Petitioner then raised the claim in his petition for review with the California Supreme Court, which denied the

1 petition without comment.

2 The law on insufficiency of the evidence claim is clearly established. The United States
3 Supreme Court has held that when reviewing an insufficiency of the evidence claim on habeas, a
4 federal court must determine whether, viewing the evidence and the inferences to be drawn from it in
5 the light most favorable to the prosecution, any rational trier of fact could find the essential elements
6 of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). Sufficiency
7 claims are judged by the elements defined by state law. Id. at 324, n. 16.

8 In denying Petitioner's claim on direct review, the Court of Appeals held as follows:

9 The verdict form for Lopez's prior serious felony conviction, as returned by the jury, stated
10 the following:

11 "We the jury in the above-entitled action, find True that the defendant, STEVEN MEJIA
12 LOPEZ, was previously convicted of violating Penal Code Section 459/460, residential
13 burglary, a felony, in Ventura County, California, in case number CR35130, on or about
14 December 16, 1994.

15 In order to prove that Lopez had a prior conviction for a serious felony, the
16 prosecutor, in pertinent part, introduced a Fingerprint Card that referred to Lopez's "Burglary
17 1ST (p459)," and an abstract of judgment which showed that in 1994, Lopez was convicted in
18 Ventura County of "BURGLARY 1ST deg." Additionally, during the jury trial of the prior
19 conviction allegations, Lopez's prior burglary conviction was repeatedly referred to as a first
20 degree burglary conviction. Nevertheless, Lopez contends the evidence is insufficient to
21 sustain the jury's finding that he had a prior conviction for a serious felony because the
22 prosecution failed to present any evidence from which the jury could conclude that his
23 conviction for first degree burglary was a conviction for residential burglary. We disagree.

24 The three strikes laws requires that a defendant's sentence be doubled if the defendant
25 has prior felony conviction as defined in section 1192.7, subdivision (c) or a violent felony as
26 defined in section 667.5, subdivision (b). (§§ 667, subd. (e)(1).) In March 2000, when
27 Lopez committed the offenses underlying the instant case, section 1192.7, subdivision (c)(18)
28 designated the following burglary offense as a serious felony: "Burglary of an inhabited
dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited
and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.44
of the Health and Safety Code, trailer coach as defined by the Vehicle Code, or the inhabited
portion of any other building." (Stats. 1998, ch. 936, §§ 13.5.)

29 At that time, first degree burglary was defined in virtually the same terms used in
30 section 1192.7, subdivision (c)(18). (§§ 460; Stats. 1991, ch. 942 (A.B. 628), §§ 15.)
(Footnote omitted.)

31 Moreover, the court, in pertinent part, charged the jury as follows: "It is also alleged in the
32 information that the defendant previously has been convicted of a felony, a violation of . . .
33 . section 459/460, residential burglary of the first degree on December 16, 1994, in the
34 county of Ventura Case Number 35130. [P] You must determine the truth of these
35 allegations." (Emphasis added.)

36 Although it is the jury's duty to determine whether the defendant suffered any alleged
37 prior convictions, "the determination of whether the prior convictions are serious felonies is
38 purely legal [.]" (*In re Taylor* (2001) 88 Cal.App.4th 1100, 1109.) Thus, the court acted

within its discretion in charging the jury with an instruction that characterized residential burglary as first degree burglary.

Further, based on the court's instruction and the evidence presented by the prosecution, the jury could reasonably conclude that Lopez's first degree burglary conviction was for residential burglary. Accordingly, we reject Lopez's contention that the evidence is insufficient to sustain the jury's finding that Lopez was convicted of residential burglary.

I

The court finds that Petitioner has presented nothing to show that this adjudication of the claim by the state court was in any way “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d). Therefore, the court must conclude that this contention provides no basis for habeas corpus relief.

Based on the foregoing, the court HEREBY RECOMMENDS as follows:

- 1) the petition for writ of habeas corpus be DENIED;
- 2) the Clerk of the Court be directed to enter judgment for Respondent and to close this case.

These Findings and Recommendation are submitted to the assigned United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served and filed within ten (10) court days (plus three days if served by mail) after service of the objections. The court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED

Dated: January 9, 2008

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE